

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case No. 06-4002-19-CR-C-NKL
)
ARNOLD W. JUERGENS,)
)
Defendant.)

ORDER

On May 15, 2007, United States Magistrate Judge William A. Knox recommended that the Court enter an Order denying Arnold W. Juergens's ("Juergens") motion for severance. *See* Report and Recommendation [Doc. # 446]. Juergens filed timely objections [Doc. # 452]. After a *de novo* review of the record, the Court is convinced that the recommendation of the Magistrate is correct and should be adopted.

Joinder is proper under Rule 8(b) where co-defendants "are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses." Fed. R. Crim. P. 8(b). Indeed, there is a preference for joint trials under the Federal Rules. *Zafiro v. United States*, 506 U.S. 534, 537 (1993); *United States v. Ruiz*, 446 F.3d 762, 772 (8th Cir. 2006). A court may grant a defendant's motion to sever where "joinder of offenses or defendants in an indictment . . . appears to prejudice a defendant." Fed. R. Crim. P. 14. However, a "district court should grant a severance under Rule 14 only if there is a serious risk that a joint trial would compromise

a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence.” *Zafiro*, 506 U.S. at 539. In the instant case, the fact that defendant is not charged in all counts of the indictment, including the conspiracy count, does not preclude him from being joined, pursuant to Rule 8(b). *United States v. Jones*, 880 F.2d 55, 62-63 (8th Cir. 1989). The government has provided evidence establishing probable cause such that he could have been charged with conspiracy had the government wanted to pursue those charges against him. That the government chose to try him for other offenses as an unindicted conspirator is not sufficient grounds for severance.

Accordingly, it is

ORDERED that Judge Knox’s Report and Recommendation of May 15, 2007, [Doc. # 446] is ADOPTED.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: August 1, 2007
Jefferson City, Missouri